IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 15427 of 2004 (O&M)
Date of Decision: 19.12.2006

Hardeep Singh through his legal heirs ..... Petitioner

Versus

Financial Commissioner Cooperation Punjab,
and others ..... Respondents

Coram: Hon'ble Mr. Justice Ashutosh Mohunta
Hon'ble Mrs. Justice Nirmal Yadav

Present: Mr. M.S.Kang, Advocate with
Mr. Satbir Rathore, Advocate
for the petitioner.

Mr. A.K.Chopra, Sr. Advocate with
Mr. Harminder Singh, Advocate.

Mr. Ashok Giri, Advocate.

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ASHUTOSH MOHUNTA, J.

The petitioner in the present writ petition challenges the order dated May 5,1999 passed by the Assistant Collector 1st Grade approving the `Naksha Jeem' and connected papers of partition in the partition of agricultural land and also the orders dated October 3,2000, April 3,2003 and December 15,2003 dismissing the appeal, revision and the second revision of the petitioner.

On an application under Section 111 of the Punjab Land Revenue Act filed by Yashpal S/o Ved Parkash for partition of land measuring 605 kanals 3 marlas in village Nandanpur in District Jalandhar, notice was given to all the concerned co-sharers and after affording them opportunity, mode of partition was determined by the Assistant Collector in the year 1988. The appeal against the said order was dismissed by the Collector. However, on remand by the Commissioner in revision petition, the mode of partition was again framed on March 10,1993 and finally

approved on April 3,1998. The field staff prepared the `Naksha Jeem' on the basis of the approved mode of partition. The Assistant Collector vide order dated May 5,1999, noticing and finding that the same was in accordance with the approved mode of partition and that no party to the proceeding had any objection against the same, finally approved the partition as per the said naksha, aks sajra and field book.

The petitioner challenged the said order by way of appeal which was dismissed by the Collector vide order dated October 3,2003. The revision filed by the petitioner was dismissed by the Divisional Commissioner vide order dated April 3,2003 and even the further revision petition of the petitioner was dismissed by the Financial Commissioner vide order dated December 15,2003.

Shri M.S.Kang, Advocate on behalf of the petitioner, argued that no opportunity had been afforded to the petitioner to raise objections against the `Naksha Jeem' and the order had been passed in total violation of the principles of natural justice. He vehemently argued that the land could not be partitioned as the mutation dispute with regard to the inheritance of Tarlok Nath had not been decided and so a question of title arises. He further contended that the impugned orders have been passed by exercising the powers with legal malafides.

Shri A.K.Chopra, Senior Advocate, on behalf of respondents, argued that the civil suit for declaration filed by the petitioner had been dismissed by the civil court on September 6,2003 and the appeal against the said judgment and decree was also dismissed on September 15,2005 but the petitioner failed to disclose the said facts in the writ petition. He further pointed out that the possession in pursuance to the partition had been delivered to the respective parties on July 8,1999. Mr. Chopra contended that the authorities under the Act have concurrently found and held that the partition had been finalized as per the mode of partition and no party to the proceedings had objected to the `Naksha Jeem'. He also argued that once the mode of partition had been finalized under the Act, the partition could not be challenged on the alleged plea of question of title. The learned Senior Counsel pointed out that compact blocks have been given to the co-owners.

Having heard the counsel for the parties at length and perusal of the material on record with the help of the learned counsel, this Court has come to the conclusion that the writ petition deserves to be dismissed. All

the authorities under the Act have concurrently held that no objection had been raised to the `Naksha Jeem' prepared on the basis of the mode of partition. The main contention of the counsel for the petitioner that no opportunity had been afforded to the petitioner to raise objections, has been found to be false. The Assistant Collector 1st Grade has noted as a fact that the parties raised no objection against the `Naksha Jeem' which was prepared in accordance with the mode of partition. The Collector while dismissing the appeal has held that:

> *"After hearing the arguments of the counsel for both parties and examining the record, I have reached the conclusion that the appellants and all other parties got their statements recorded and had shown their consent to get the land partitioned as per mode of partition and in accordance with that `Naksha E' was prepared and submitted in the court of A.C. Ist Grade, Jalandhar and on 5.5.99, appellants and their counsel and other parties were present in the lower court where co-sharers got their statements recorded on 5.5.99. Therefore, the argument of the appellants that they were not present in the lower court on 5.5.99 is not acceptable. Had they really got any objection, then they would have submitted objections against `Naksha E' or they would have filed appeal within limitation. I am not satisfied with the reason given for filing the appeal late. Therefore, delay cannot be condoned without any reason. The appellants have not shown in their appeal or during arguments from which specific number their possession has been disturbed. It is found on examination of the shajra aks that Hardeep Singh and Harmeet Singh have been given a compact of chahi land absolutely near the abadi deh. Therefore, the right of the appellants appears to have been violated."*

The Commissioner, while upholding the orders of the Assistant Collector and the Collector, has held that the perusal of the record revealed that possession had been delivered to the parties according to the sanad partition and that khatas of all the co-owners were separated and partition order stood implemented by the revenue authorities on July 8,1999 and rapat in the revenue record had also been entered. He gave a positive

finding that the partition proceedings had been completed in accordance with the mode of partition which was accepted by the petitioners by recording a statement before the Assistant Collector. The Financial Commissioner has also upheld the findings. The mode of partition having been finalized as per law, the partition papers having been prepared as per the approved mode of partition and the possession having been given, no ground for interference is made out in exercise of the writ jurisdiction. No error of jurisdiction or any illegality is found by us in the impugned orders. Consequently, the writ petition is dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

19.12.2006 **(NIRMAL YADAV)**
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